Doing business in disputed regions: a proposal for a new focus on private sector support for state building

Sandschneider, Eberhard

DGAPanalyse

Prof. Dr. Eberhard Sandschneider (Hrsg.)
Otto Wolff-Direktor des Forschungsinstituts der DGAP e. V.

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Doing Business in Disputed Regions

A Proposal for a New Focus on Private Sector Support for State Building

by Eberhard Sandschneider

DGAP Deutsche Gesellschaft für Auswärtige Politik e.V.

Zusammenfassung

Die Rolle von Unternehmen in Räumen umstrittener Staatlichkeit

von Eberhard Sandschneider

- Funktionierende Staatlichkeit ist eher die Ausnahme als die Regel in der Staatenwelt des frühen 21. Jahrhunderts. Schwache und zerfallende Staaten sowie völkerrechtlich umstrittene Gebiete gehören infolgedessen zu den größten Herausforderungen in der internationalen Politik in allen Fragen des wirtschaftlichen Aufbaus, aber auch der globalen Sicherheit. Die vergessene Dimension dieser Diskussion berührt die Frage, welche Rolle unternehmerische Aktivitäten in diesem Kontext spielen.
- Bei völkerrechtlich umstrittenen Regionen handelt es sich um Gebiete, in denen Staatlichkeit nicht eindeutig definiert ist, weil mindestens zwei Souveränitätsansprüche erhoben werden und eine umfassende internationale Anerkennung folglich unterbleibt. Als unmittelbare Folge zeigen solche Regionen immer in unterschiedlicher Weise Formen von Staatsversagen und begrenzter Staatlichkeit, die insbesondere für wirtschaftliche Akteure mit erheblichen Risiken verbunden sind.
- Unternehmen erweisen sich in solchen Regionen als entscheidende Akteure, um wenigstens ein Mindestmaß an Stabilität im Sinne der Versorgung der Bevölkerung mit Basisdienstleistungen etwa in den Bereichen Infrastruktur, Telekommunikation, Bankwesen und Logistik zu gewährleisten. Diese Stabilisierungsfunktion ist die Voraussetzung für jeden weiterführenden Versuch der externen Beeinflussung und Unterstützung von Staatsbildung oder gar Transformation zur Demokratie. Natürlich gilt dies nur für die Unternehmen, die sich der politischen Konsequenzen ihres Handelns bewusst sind und sich an die entsprechend geltenden globalen Gepflogenheiten und Standards (etwa den „global compact“) halten.
- Für Unternehmen in solchen Regionen ist Erfolg in wirtschaftlich und politisch schwierigen Rahmenbedingungen daran gebunden, dass so lange wie möglich Politikferne praktiziert werden kann, eigene Sozialstandards konsequent und transparent umgesetzt werden, Unterstützung nicht nur im lokalen, sondern auch im regionalen und globalen Rahmen (insbesondere in Fragen der fehlenden Rechtssicherheit) gesucht wird, die Kooperation mit anderen Unternehmen zur erfolgreichen Interessendurchsetzung vor Ort genutzt wird und schließlich ein proaktives Kommunikationskonzept zur Anwendung kommt, das rechtzeitig vor ungerechtfertigter Kritik zu schützen vermag.
- Um die stabilisierenden Effekte von Unternehmensaktivitäten zu nutzen ist die internationale Staatengemeinschaft gut beraten, wo immer möglich, die Voraussetzungen für größere Rechtssicherheit (etwa bei Fragen der Strafverfolgung unter konkurrierenden Rechtssystemen) zu schaffen. Erst aus dem kooperativen Zusammenwirken zwischen staatlichen Förderaktivitäten, zivilgesellschaftlichem Engagement und unternehmerischer Stabilisierungshilfe werden die Voraussetzungen für eine erfolgreiche Politik der Unterstützung schwacher und zerfallender Staaten von außen geschaffen.

Summary

Doing Business in Disputed Regions

by Eberhard Sandschneider

- Weak states and disputed regions have become one of the predominant challenges for efficient and peaceful cooperation in the early 21st century. Business activities are the forgotten dimension of the debate on sustainable state building efforts.
- Disputed regions may, therefore, be defined as areas where statehood and international legal recognition are contested and where, as a consequence, different forms of failing statehood prevail. Not all disputed regions are failing or failed states in a strictly political sense, but there is a high likelihood that disputed regions become failed or that failing states turn into disputed regions.
- The relative neglect of business activities is also a major reason for failing attempts of creating the most basic and necessary requisite of state building: A minimum and reliable setting of livelihood, economic performance and social cohesion are a crucial necessity for stability.
- Business activities are key to success in stabilizing disputed regions and failing states: For millions of people, basic services helping them to organize their most urgent daily needs are not being provided for by functioning states and state services but by private companies both domestic and international. Without such business activities aimed at improving infrastructure, providing communication services, organizing basic logistic needs or allowing for financial transactions, life in these regions would be even more complicated because states or competing state-like institutions are not able or willing to provide these services.
- The biggest challenges encountered by external actors in failing or failed states are a lack of legal reliability, uncertain and in some cases high risk security circumstances, dangers of misuse of products, problems with the transfer of corporate governance and in most cases threats to a company's corporate image including the danger of financial losses on third (and usually more important) markets.
- Successful business strategies in disputed regions should concentrate on avoiding direct political involvement (as long as and whenever possible), on implementing a transparent code of conduct and standards of business behaviour, on seeking support not only from local, but also from regional institutions and international regulatory systems, and finally, on choosing a pro-active communication strategy in order to protect business activities from politically motivated criticism.
- For international actors and states it is of paramount importance to understand the need to support business activities – both politically and legally in order to provide at least a minimum of protection for agents on the ground.

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Doing Business in Disputed Regions

Failing States, Disputed Regions and the Role of Business

The role of business activities in failing states or disputed regions hitherto has found little academic and political attention.[1] In most public debates about how best to promote state building, the role of business is a dark spot. This research paper tries to refocus the debate on state building by addressing this sensitive issue with a clear message: Business activities are instrumental to any attempt of successfully promoting stability and state building in some of the most sensitive regions of today's global landscape. It is, therefore, utterly necessary to focus more on business activities in disputed regions as a requisite and major strategic approach to success in building stability, supporting people's livelihood in afflicted areas and pursue a sustainable perspective of political development towards functioning statehood (and in a long-term perspective even democracy).

Debates about the respective role of states as major actors in global affairs have a long tradition in media, politics and academia. Over the last years, assumptions that states may relatively loose their importance due to effects of globalization and the rise both of NGOs and global business have been replaced by an assumed "return of the state".[2] While these debates have mainly dominated academic discussions, a closer look at the reality of state power at the beginning 21st century shows a sobering perspective: The world of today is dominated by some 190 odd states or state-like regions. But statehood in the sense that political and economic actors find reliable and sustainable institutional frameworks and legal rules for their respective activities are the exception, not the rule. The assumption that statehood always works more or less automatically in established and internationally recognized states is a myth. In many cases, statehood is in one way or another limited to the extent that we even find failing or outright failed state structures. This phenomenon becomes even more important when we turn to disputed regions (see below).

However, government structures developed in countries with limited statehood differ from those in established western states. A comparative research done by the German Council on Foreign Relations (DGAP) and published as 2010 Yearbook clearly shows that it is important to view good governance not in a normative, but in a functional sense including the difficulties encountered by state builders who try to establish new rules and institutions in regions of limited, failing or disputed statehood. In conclusion, state actors (and public comments) should abstain from simply projecting western ideas of democracies on precarious states and certainly from attempting to fast track the transformation of existing local power structures.[3]

It is furthermore important to realize that all attempts (mainly by western democracies) to support state building in weak and frail states have produced limited, if any results at all. The preoccupation with state building instead of stability building has led to high expectations both among donors and recipients. But an undisputable lack of positive results has meanwhile replaced the hopes of the early 1990s. A sobering disappointment seems to characterize recent debates about aims and limits to external support for state building. Most obviously, in cases like Afghanistan or Iraq these attempts have failed and keep failing for two reasons: First, the simple approach of transferring benchmarks of western statehood including institutions, rules and values into areas without social, political and economic stability is bound to failure. Second, the relative neglect of business activities is a major reason for failing attempts of building the most basic and necessary requisite of state building: stability, i.e. a minimum and reliable setting of livelihood, economic performance and social cohesion.

As a consequence, weak states and disputed regions have become one of the predominant challenges for efficient and peaceful cooperation in the early 21st century. Depending on the criteria, indicators and data used to measure statehood, some 40 – 60 states may at present be measured as "weak", "failing" or "failed". Among them are countries as different as Bosnia-Herzegovina, Georgia, Afghanistan, Pakistan, Iraq, Lebanon, Yemen, Somalia or the Democratic Republic of Congo.

Disputed Regions: A Comparative Perspective

There are good reasons to focus international attention on these regions – for normative aspects since they do not fulfil legitimate standards, but also for security reasons since they may have a negative impact on their own territory, but similarly important also on their neighbouring countries and beyond. When Chancellor Merkel became target of a bomb parcel in November 2010, it soon became clear that the threat came from Yemen via Greece, was transported via cargo flights and delivered logistically without any suspicion. The danger emanating from failing states and disputed regions once more became obvious.

A special case of weak statehood concerns disputed regions where political rules are not defined by one central authority, but where political power is contested between two or more political stakeholders, sometimes even with the involvement of the international community. Disputed regions may, therefore, be defined as areas where statehood and international legal recognition is contested, where basic state functions are limited or even non-existing and where – as a consequence – economic recovery remains close to or even below zero.

In most cases, disputed regions are not only areas of contested statehood, but also a sub-category of failing or failed states with "weak capacities to carry out basic functions of governing a population and its territory" and "lack the ability to develop mutually constructive and reinforcing relations with society."[4] Contested statehood in all cases included here leads to deficiencies in state functions and institutional performance which are a core aspect for ranking a certain region as being disputed.[5]

Before we briefly look at nine of the most prominent cases of disputed regions, it should be clear that this project is not taking positions as to which claims between contenders for statehood and sovereignty should be regarded as legitimate or more legitimate than others. The case selection is simply based on the fact that in the regions mentioned below statehood is disputed for whatever reason with a focus on the consequences for business activities.

It is furthermore important to note that when dealing with disputed regions access to reliable facts and sources about the situation on the ground is not always available. This is not only a challenge for external observers and research on the regions, but also a major challenge for any company in need of basic information on political and economic backgrounds before deciding on potential investment.

The nine cases on which the logic of this proposal is based can be briefly characterized as follows (in alphabetical order):

Abkhazia

The region of Abkhazia is located close to the Black Sea and de jure a part of Georgia with a population of about 200,000 inhabitants. Following the collapse of the Soviet Union and the independence of Georgia in 1991, Abkhazia proclaimed independence the following year. After some military impacts, causing thousands of deaths and about 250,000 ethnic Georgian refugees, today only Russia, Nicaragua, Venezuela and Nauru recognise Abkhazia's independence, while Georgia, the USA and NATO consider Abkhazia as Georgian territory occupied by Russia – 1,500 Russian soldiers are positioned in the region guaranteeing freedom on behalf of the Commonwealth of Independent States. Contrary to the second disputed Georgian region, South Ossetia, Abkhazia is less dependent on Russia concerning budgetary and state structures.

Russian investors are actively trying to develop the region through investment focusing on the tourism branch and infrastructure, especially in the light of the upcoming 2014 Olympic Winter Games in Sochi, Russia.

Nagorno-Karabakh

Nagorno-Karabakh is located in the southwest of Azerbaijan, close to the Armenian and Iranian border. Together with the areas around Nagorno-Karabakh, which are likewise occupied by the Armenian army, the region amounts to about one fifth of the Azerbaijan territory and has approximately 140,000 inhabitants.

De jure the region is part of Azerbaijan, but today it is largely occupied by ethnic Armenians, who proclaimed independence in 1991. Between 1988 and a ceasefire in 1994 there were many serious, bloody acts of war between Armenian and Azerbaijanian troops, which caused thousands of deaths on both sides and were eventually won by the Armenian side. Since then, there have been several attempts to resolve the conflict – attended by ongoing armed fights. In this context the most important board is the so-called Minsk Group, initiated by the OSCE in 1992 – although without real success till today.

Because of the disputed status of Nagorno-Karabakh and its dependence on Armenia, whose economy is not very strong itself, its economic position is problematic. The fact of being a de facto Armenian exclave in Azerbaijan causes severe infrastructure and transportation problems.

Kosovo

Kosovo has about 1.8 million inhabitants. It is located south of Serbia, east of Montenegro, and north of Albania and Macedonia. In February 2008, the Parliament of Kosovo declared political independence from the former Serbian province and thus rendered Kosovo a clear case of disputed statehood. Until August 2010, only 69 out of the 192 members of the United Nations recognized Kosovo as an independent state. Undoubtedly, ethnical violence has been considerably reduced in the region, but discrimination of minorities, problems with refugees and tensions, sometimes even confrontations between Kosovars and the roundabout 100,000 Serbs who still live in Kosovo still occur. In conclusion, sovereignty in Kosovo is contested which means that there is no central government control over the northern territory.

Kosovo's economic performance has improved considerably over the past decade, but large imbalances persist. The external imbalances largely reflect infrastructure bottlenecks, especially in the transport system and energy sector, that continue to stifle the export sector and output growth. The economy is import-oriented and dependent on external remittances. The GDP growth was 4 percent in 2009 and the inflation average was 2.2 percent p.a. over the past five years. Between 2001 and 2006 FDI more than trebled.

Northern Cyprus

The island Cyprus is located in the very east of the Mediterranean Sea, south of Turkey and west of Syria and Lebanon. The whole island has a population of about 1.05 million, with about 780,000 inhabitants living in the southern part.

Since 1983, Cyprus is de facto divided into two parts – a Turkish oriented northern part and a Greek oriented southern part. Already after becoming a British colony in 1925 and later after becoming independent in 1959 the split between these two ethnic groups became visible. In the following years the conflict built up to the separation of the two regions through the so-called "Green Line", which divides the capital Nicosia and the whole island. Turkey, whose troops invaded the northern part of the island in 1974, is the only country worldwide which recognizes the Turkish Republic of Northern Cyprus (TRNC), which was proclaimed in 1983. In the past, the UN has made several attempts at resolving the conflict but there seems to be no clear perspective for conflict resolution in the foreseeable future.

Due to different reasons the economic development in the northern part of Cyprus has been weaker than that in the south. The unemployment rate in 2010 is close to 24 percent in the north and about 7 percent in the south. One of the main problems is the trade between the TRNC and the member states of the EU, which is negatively influenced by the southern part and its bureaucracy. For Turkey a change of this situation is a precondition for a stronger relationship with the southern part in economic and traffic related terms.

South Ossetia

South Ossetia is a very small region of about 3,900 km² in the north of Georgia with approximately 70,000 inhabitants which are mostly ethnic Ossetians. It was the main location of the fights between Georgian and Russian troops in the war of August 2008. South Ossetia is still occupied by about 1,700 Russian soldiers and recognized as independent only by Russia, Nicaragua, Venezuela and Nauru. Russia staffs over half of the government, donates 98 percent of the budget and provides at least minimal security. The Ossetians were divided in early Soviet times in a northern part, which is now part of the Russian Federation and a southern part, which belongs to Georgia.

Since its traditional trading routes to the rest of Georgia are closed, the underdeveloped South Ossetian economy has been more or less reduced to a service provider for Russian military and construction personnel. As an outcome of the Russian-Georgian war the regional infrastructure was destroyed to a great extent and reconstruction is proceeding slowly. As a consequence, the region shows a low level of income and a high unemployment rate.

Somaliland

Somaliland is located in the east of Africa, in the north of Somalia, east of Ethiopia, south of Djibouti, bordering the Gulf of Aden in the north. The population presumably amounts to about 2.5 – 3.5 million.

After the independence from Great Britain in 1960, today´s Somaliland and former colony British-Somaliland united with Italian-Somaliland to the Republic of Somalia. In the context of the civil war in the country, the region of Somaliland unilaterally proclaimed independence from the Republic of Somalia. Because of internal instability, e.g. continuous conflicts over territorial affiliation concerning bordering areas, there is no widespread recognition of the region's independence and additionally Somaliland is – in spite of a membership application in 2005 – not a member of the African Union.

Although the economy has grown significantly since the proclamation of independence, it is still a vastly underdeveloped region. Poverty and hunger are widespread among the population. The most important sources of income are agriculture, port industry and remittances of compatriots living abroad.

Transnistria

With about 3,600 km² the region of Transnistria amounts to 10 percent of the territory of the Republic of Moldova. One third of the 550,000 inhabitants, which is about the seventh part of the Republic of Moldova, are ethnically Moldavians, one third Russians and one third Ukrainians.

Transnistria is strongly oriented towards Russia – about 500 Russian soldiers are currently positioned in the region –, although under international law it is an integral part of the Republic of Moldova. To resolve the conflict, negotiations between Transnistria, the Republic of Moldova, Russia, Ukraine and OSCE started in 1993. In 2005 this group was expanded to the so-called 5+2-format through the observer status of the EU and the USA. Currently proceedings are stagnating.

Traditionally Transnistria is the industrially most developed area in Moldova. Furthermore the trade flows between Transnistria and the rest of Moldova are quite significant. The import rates of Transnistria are twice as high as the export rates. Especially in the face of the global financial and economic crisis, foreign direct investment (FDI) became essential. In the first quarter of 2009 the gross domestic product (GDP) decreased about 9 percent and the industrial production about 30 percent. For 2011 the forecasts for the inflation rate are amounting to 12 percent. Additionally Russia cut back the financial support in 2010 connected to high liabilities towards the Russian gas provider Gazprom.

West Bank

The West Bank shares a border with Israel in the north, west and south, while in the east it borders Jordan. The population amounts to 2.35 million people. Together with the Gaza Strip it forms the Palestinian Territories.

After the Jordanian occupation and annexation violating international law in 1948/1949 it became occupied by Israel in 1967. Since 1993 parts of the area have been under the administration of the Palestinian National Authority.

Compared to the Gaza Strip the economic situation in West Bank developed quite well during the last years. The IWF forecasts an 8 percent growth rate for 2010. The biggest competitive advantages are the high quality of education, the improved security situation and a successful battle against corruption. FDI is especially coming from the Gulf States.

Western Sahara

The region is located in the African northwest, bordering the Atlantic Ocean in the west, Morocco in the north, Algeria in the west and Mauritania in the west and south. The population amounts to about 380,000 people.

After the former colonial power Spain had left the territory in 1975, Morocco and Mauritania enforced their claims on the area. In 1976, after 350,000 Moroccans had invaded the territory of Western Sahara the year before, a socialist movement called Frente Polisario, which was supported by Algeria, claimed the independent state of the Democratic Arabic Republic Sahara. Today it is a member of the African Union – but only 19 out of 53 member states recognise Western Sahara as independent, while due to this conflict Morocco is the only African state not included in the alliance. After Mauritania backed out from the region in 1979, Morocco annexed the western part of Western Sahara. After the ceasefire of Frente Polisario and Morocco, there is currently no final decision concerning the status of the region. About 100,000 refugees, supporters of the Frente Polisario, are living in Algeria.

In economic and infrastructural terms Western Sahara is still very underdeveloped, especially the eastern part which is not under Moroccan control. The most important sources of economy are fishery, date palms and mineral resources, especially phosphate. A significant potential is accredited to the branches of wind energy and tourism.

Even a short survey of the nine regions characterized so far as falling into the spectrum of our definition clearly provides three consequences:

1. In all cases on which this study is based, political tensions lead to serious negative effects on local business, trade, people's livelihood, social stability and security. Global business partners often provide at least a minimum of sensitive products (e.g. medicine) and scarce services. Although acting under circumstances of maximum risk, their contribution to stabilization is without alternative.
2. Neither of these cases can be easily compared to any other. For historical, geographic, political and economic reasons each region has in the end to be treated as sui generis. Highly specific historical, political and regional settings, tensions between independence (e.g. Kosovo) and accession (e.g. South Ossetia and Transnistria) and different levels and problems of economic development, legal conditions and dysfunctionalities encountered hardly allow for a direct comparison.[6] As a consequence, searching for an overall approach to support from abroad is a futile expectation. Instead, individual and step-by-step approaches are the only fruitful basis for successful business strategies. There is no grand strategy for doing business in disputed regions.
3. A comparative perspective does, however, reveal the systemic problems which will have to be mastered by external actors, no matter whether they are business or policy oriented. In many disputed regions, small business is the basis for surviving. But major services necessary for overall economic recovery like telecommunications, logistics and banking etc. are too complex for small and local business to master. Although local companies usually manage to survive despite the risks and challenges in their uncertain environment, they lack access to resources, necessary financial means and very often also the entrepreneurial spirit necessary for major business operations. The need for major investments and large-scale operations necessitates business activities from abroad or outside the region which often come into conflict with local competitors and more importantly with political ramifications which render business activities extremely risky.

The Importance of the Private Sector

The impact of conflicts on entrepreneurial activities has meanwhile become the subject of a wider literature. Research results presented so far imply that "entrepreneurship plays an important role in driving countries out of poverty traps, and even out of conflict situations. Part of the literature also stresses that, rather than entrepreneurship per se, it is productive entrepreneurship that nurtures development. On the other hand, conflict is likely to have an impact, directly or indirectly, both on the possibility of holding an entrepreneurial activity, and on the motivations to do so (whether for survival or because of the exploitation of new business opportunities)."[7]

Based on these insights the core message of this proposal suggests that business activities are key to success in stabilizing disputed regions and failing states: For millions of people, basic services helping them to organize their most urgent daily needs are not being provided by functioning states and state services but by private companies both domestic and international.

Without such business activities aimed at improving infrastructure, providing communication services, organizing basic logistic needs or allowing for financial transactions, life in these regions would be even more complicated because states or competing state-like institutions are not able or willing to provide these services. Without business helping out, any debate about Human Rights, living standards or the improvement of people's livelihood remains symbolic, out of touch with reality and open for double standards.

But doing business in disputed regions is of course burdened with enormous risks. By definition, contested statehood does not provide the reliability of legal rules which allow for the safety of long-term investment, the return of interest on invested capital or even the safety of operations on the ground. In theory, the most obvious advice to any company could, therefore, only be: Never invest in disputed regions! Risks are too high, investments not safe enough and return on investment mostly a fragile expectation. In addition, there is an image risk for being accused (mostly by media) of too close relations with dictatorial leaderships, in-transparent political structures, illegitimate institutions or, even worse, with politicians and institutions violating Human Rights.

From a business perspective, disputed regions are without exception small and risky markets. Turnover and (if existing) return on investment does not have any significant impact on a company's overall balance sheet. Quite to the contrary: A typical worst case scenario is an investment coming under political pressure, thus at the same time doing maximum damage not only to the investment itself but also to the company's image at home and abroad including the danger of serious financial losses (on third and major markets).

Where then does the motivation for investing in disputed regions come from? Based on confidential interviews with business representatives of companies active in these regions, the following four sets of motives are decisive:

First, an interest in continuation of business is preventing retreat from disputed regions. In some cases, companies especially in the infrastructure and logistics field had started business operations before the outbreak of political conflicts over sovereignty. They then tend to continue their activities despite growing insecurity by managing to adapt to a radically changed environment in order to protect former investments and maintain relations with local partners and customers.

Second, future market expectations may play a role in investment decisions. Although most disputed regions have comparatively small local markets and contribute little to the overall income of global players, expectations in the market development after a solution of political problems are given as a reason for engaging in these regions.

Third, comprehensive service offer for customers seems to be the dominating motive for most companies who want to serve their customer interests by providing services even in those regions where for political and economic reasons they would otherwise not be operating. Consequently, they face additional costs in order to manage especially security but also general market risks.

Finally, although this motive is never officially given, political interests may play a role – rendering the private sector a substitute for exerting political influence in a region which would otherwise not be accessible for direct influence of external political actors. In disputed regions, clear dividing lines between business and state sectors are often difficult to define. In a positive perspective, foreign companies may be forced to take over the role of rule-setters themselves in economic environments where rules are almost non-existing and certainly unreliable. Typical examples are companies which have to hire private security personal, thus taking over at least partially state functions – and are welcomed and supported by NGOs in that specific function. A Study on "Sustainability in Petroleum Industry" clearly reflects this problem and widens the task for corporate actors by openly stating: "Faced with serious deficiencies in the institutional framework of global markets, companies can no longer restrict themselves to the role of rule-taking. Instead, companies must actively participate in processes of rule-making. In order to live up to expectations, it is not enough to comply with a given set of (deficient) rules. What is legal is not always accepted to be legitimate. Therefore, companies are well advised to engage in New Governance. They undertake ordo-responsibility and participate as corporate citizens in rule-finding discourses as well as in rule-setting political processes."[8] But in a negative perspective, a company could also become viewed as a representative and perhaps even a substitute for an external political actor (i.e. a state) involved in the conflict. In that case, negative consequences for global positioning and corporate credibility might follow.

As a consequence of this last aspect, it is first of all important to understand that there are two completely unequal rationales for any kind of engagement in disputed regions. Most political initiatives are either based on rules and norms (e.g. "good governance") and aim at fundamental changes in the systemic setup of institutions, decision-making procedures, selection of leadership personnel and political norms applied in the target area, or driven by power politics and specific intentions of external state institutions.

Business engagement, however, is driven by a broad spectrum of interests, as we have seen. These interests reflect changes in regional engagement after political conditions have changed on the ground, including the flexibility for partial retreat or even a radical shut-down of operations when conditions become too severe to further pursue former economic interests.

In a purely business perspective, markets in disputed regions are too risky and too small to allow for an economic engagement without political impetus or support. And even more importantly, what does matter for business is stability – no matter who is the institution or person guaranteeing it. It may be a democratic state, it may be an autocratic state, it may even be a dictatorial system. As long as stability prevails which allows for reliable conditions of engagement, politics is almost by definition not the first and foremost interest of companies, but their respective economic interest.

Implementing "change via trade" will, therefore, only work when it is possible to base business engagement on a long-term perspective and on the unconditional will of companies to implement their own social standards (e.g. along the principles of "global compact") no matter what local conditions are. Here lies the secret of very indirect, rarely publicly debated but still highly efficient piecemeal changes in business culture which might not only help workers and employees who are directly affected but might also win a more substantial effect on political changes outside the immediate sphere of business influence.

Thus, apart from states as agents of good governance, there are also increasing expectations on business to help promote good governance: Business and business associations "have a duty to respect ethical considerations, which may be a written code of conduct or much harder to define, as ethics can depend on the view taken by the outside world of the behaviour of the organization."[9]

However, high-flying intentions to implement good governance both for states and companies are not enough. There is always the risk of failure, but even more so the risk of a potential loss of image by national and international campaigns criticizing approaches and results in target areas.

Business Risks in Disputed Regions

In addition to the motives and political ramifications for business in disputed regions, there are a number of core risks which have a definite impact on activities on the ground. Based on interviews with business representatives from different sectors, four of these risks have proved as especially important.

First, seeking legal reliability is a major challenge for all private sector activities in areas where almost by definition legal frameworks are weak or even non-existing. But it is not only the formal aspect of legal frameworks for business activities, but also the need for companies to protect their own people from legal prosecution within disputed regions, but similarly important also from international prosecution in case contenders for state power turn to foreign law-enforcement agencies (like e.g. Interpol). Sometimes company representatives complain that it is easier for local authorities to prosecute officials from foreign companies than to undertake administrative or legal steps to do so themselves (or create reliable legal structures for that matter).

Second, in a broader perspective, managing security is a fundamental risk both related to products which might be stolen and misused and certainly also to personal working on the ground who might be endangered by criminal activities such as robbery, blackmail or in worst cases even kidnapping. There can never be a guarantee that products and services meant to improve living standards might also be misused to serve the respective interests of local power-holders. E.g. providing telecommunication facilities could, of course, be a requisite to improve civil society's activities, but it might also be used to spot dissidents, arrest them and put them into jail – with obvious consequences of violation of Human Rights, failing standards of rule of law and international criticism also affecting the original provider of the technological capacities needed for such a policy.

Third, transferring Corporate Governance (and compliance) is politically desirable, necessary for creating public legitimacy, but almost certainly also open for problems of implementation on the ground. Bribery and corruption certainly belong to the most important challenges in this respect, especially since legal frameworks are weak or disputed and specific actions difficult to prosecute. In more general words, non-compliance may be found by different sets of actors who work in violation of a company's rules and are difficult to spot, to force into compliance or to push out of business due to their misbehaviour. Whatever the difficulties are in detail, the final consequences will always affect not only those who violate rules, but also the foreign company which officially stands for their implementation. Again there is almost no way of generalizing on this issue since local circumstances, the actors involved and the seriousness of consequences stemming from non-compliance are too specific to choose an overall strategic approach to solve the problem. Every foreign company will have to find specific ways to deal with these issues on an almost case by case approach.

Finally, promoting Human Rights always is a politically most sensitive issue with potential repercussions on image and public standing. Human Rights rank prominently in the foreign policies of almost all western states. Insisting on standards of Human Rights being implemented in countries with which western democracies have political and economic relations has traditionally become a standard procedure within foreign policy debates. It is, however, necessary to realize the threat of double standards: Whenever economic interests have to be balanced against Human Rights positions, the very idea of Human Rights might suffer more damage than anticipated by its proponents. For the time being, the public discourse in western democracies finds it difficult to accept a very simple distinction which would help solve the double standard problem and would allow for a integrated and thus more flexible and credible Human Rights policy. On the government level, Human Rights of course will have to remain on the agenda. The debates with other governments, however, could and should be reduced to the instruments of silent diplomacy which in the end might be more successful between governments than any attempt to publicly blame and shame partners for violations of Human Rights. The usual consequence of such debates leads to unsolvable controversies and hardly to the intended effects. On the second level, however, when NGOs come into play, it is necessary for any NGO working in this field, to be as outspoken as possible. Institutions like Amnesty International may not be silent as long as

Human Rights are being violated anywhere in the world. It is their task to publicly address any form of violations of Human Rights thereby complimenting (and not contradicting) government policies of silent diplomacy. And in addition there is the third element of economic cooperation which is not by definition an obstacle to active Human Rights policies. Even companies who are active in areas and states where Human Rights are being violated, do have to follow their primary mission of doing business (i.e. making money), but by providing necessary services for improving welfare and improving livelihood and more importantly by setting standards concerning labor law and the treatment of workers they might help to implement Human Rights much more effectively than by simply following heroic demands for not doing business with countries and regions in which Human Rights are not (yet) implemented according to western standards.

Any successful Human Rights policy should thus be legitimately divided into three sub-approaches: First, predominantly silent government policies; second, open and critical NGO approaches, and third pragmatic support of stabilization measures focusing on the provision of basic services, including social standards offered by business. It is the complementarity between these approaches which holds the key to success and not mutually exclusive accusations mainly in western media!

The preliminary findings we have presented so far, lead to two core messages: First, it is counterproductive to force foreign companies into retreat from disputed regions and failing states (mostly via sanctions and threats to market shares in strategic more important and bigger markets). Almost as a rule, other actors (most prominently, but not only from China) easily move in, take over markets shares and start implementing their own strategic interests – including the implementation of much lower standards of CSR and social responsibility than would have otherwise been implemented. In this respect, political pressure is clearly counterproductive to political symbolism and value oriented political aims! And secondly, any company which wants to be successful in these markets is well advised to reach respectively maintain maximum public support by actively and unconditionally implementing global standards of CSR and to communicate this policy with as much transparency as possible both on home and target markets in order to protect itself against incalculable public criticism.

All these risks do in principle apply to any foreign business active in disputed regions. But there are business fields which due to their utmost importance for the provision of basic services clearly are strategically more important than others.

Strategic Business Fields

Building infrastructure belongs to the most basic and important needs in all regions where necessary investments are scarce, existing structures often non-functioning or at least partly destroyed and millions of people dependant on help from abroad to support their most basic needs for survival.

The importance of providing such basic services in vital areas of business and health care can be underscored by two examples from Kosovo:

"Frequent power cuts hamper industrial production and people's everyday life in Kosovo. The need to import electricity from abroad comes at a significant cost for business. Moreover, most health centres still need to rely on generators to ensure their electricity supply. On 12 January 2009, an explosion in the Rahovec/Orahovac health centre's generator triggered a dangerous situation in which the 200 patients of the hospital were temporarily left without electricity. When the generator caught fire, the centre was taking care of four women who were about to give birth, several patients with injuries and a number of others who needed regular medical treatment for flu, stomach problems or other illnesses. Crucial medical equipment such as X-ray machines and the refrigerator storing vaccines stopped working. According to Dr. Vuqiterna, the situation triggered a panic since the hospital personnel could not be sure whether the generator could be fixed and how many emergency cases might have to be seen to in the meantime. Although the OSCE donated their generator to the health centre, this is not a durable solution. However, the municipality cannot provide the funding to improve the town's power infrastructure."[10]

A second example underlines the severity of the problem since it demonstrates that local suppliers are all but reliable – adding to the anyway high risks of local business:

"In the 'Dona' fruit juice factory in Podujeve, Northeast Kosovo, there are two big generators which buzz without stopping. Due to the immense noise that they make, facial expressions seem to be the only way of communication for the workers, since words can't be heard. Bashkim Osmani, the owner of the factory, says that there is no other way out, except the usage of these noisy equipments which have cost him about 90.000 €. This happened when he made the decision to withdraw from the official electricity distribution system of the national energy company, KEK, since he could no longer bare the power shortages. 'If you rely on KEK, then your business is over,' he says."[11]

The lesson is clear: People depend on sustained support of energy production and supply by foreign companies if they want to maintain their daily life and business.

A second and similarly important service refers to telecommunications. "The mobile telecommunications sector is unique in that airwaves can travel without regard to borders, often defying the licensing and regulation practices of one side of a territorial dispute. Even if a mobile company is operating legally in one region, it cannot necessarily control whether its airwaves traverse the border into another region. It also provides plausible deniability to mobile companies who can claim (whether rightly or not) that they are not operating in a disputed territory." [12]

A comparative press survey between February and October 2010 easily reveals the ubiquity of typical problems in almost all disputed regions: "Disputes in Kosovo, the Palestinian Territories, South Ossetia and Abkhazia have garnered the most media attention in the past months. Questions persist over Russian investment and property rights in the territories of South Ossetia and Abkhasia, a region where refugees have not been repatriated. The privatization offering of Kosovo's telecommunications company PTK to European investors raises questions about the ownership of assets in the region claimed as integral territory of Serbia. The entry of Qatari mobile provider Wataniya into the Palestinian market highlights the problem of bandwidth licensing in a state with limited recognition. In addition to these examples, international companies face a similar business climate in the unrecognized states of Western Sahara, Transnistria, Nagorno-Karabakh and Northern Cyprus."[13]

Providing functioning banking services is of special relevance to all those people who have relatives abroad who are able and willing to support them by transferring money via international banks to local accounts. Hampering these services immediately has severe consequences for local business and individual families. A prominent example is related to American authorities' closing down of international activities of the Somalian Barakaat Bank which was suspected of having financially supported terrorist activities in Somalia. The Bank, Somalia's biggest employer also holds a telecommunication company, a construction company and a number of other businesses. When 12 million US Dollar were frozen, thousands of Somalis living in exile lost their opportunity to transfer money to their relatives who in most cases directly depend on these incomes for their daily survival. In addition, 5,000 employees of the bank lost their jobs.[14]

Finally, logistics plays an important and strategic role in providing reliable channels of transport for both export and import of products and sensitive resources. Transport security, but also the protection of local agents ranks prominently in most companies business activities. Based on the motive of comprehensive service, bases of operation are only rarely to be found within disputed regions. Instead, transport channels are organized from the immediate neighbouring areas to reduce the risk of local insecurity. Business strategies might vary considerably from region to region, but usually concentrate on transport logistics only. Market size as well as political and public security risks prevent the implementation of the whole chain of logistics activities. But still, the service provided by global logistic companies is without alternative to support at least a minimum of connectivity with the outside world.

In all these fields, two strategic aspects are essential for success. First, the need for political coordination is without alternative. While external political support usually remains on the symbolic level only, business activities without external political support may run into a trap of helping to stabilize structures in which those actors prevail whose interest in really reshaping public order is lowest, while no support might lead to unacceptable living conditions and a further decay of state functions. Thus, political insurance and support for risky business investments in disputed regions is essential for success and in the mutual interest of all external actors involved.

But secondly, learning from general lessons of business in underdeveloped regions provides useful elements of a strategy of self-immunization against both public criticism and even legal prosecution. As Ann Bernstein, the Executive Director of the Centre for Development and Enterprise in South Africa explains: "Companies are frequently painted as social outlaws which fundamentally need to change their ways before they can play a positive role in the developing world – if at all, ever. And yet rather than provoking a vigorous reaction from business, especially those many large companies with huge interests and innovative and detailed strategies in the developing world, this determined attack has for the most part met a limp response, reactive only to the most serious public challenges."[15] For business, it is always a challenge to cross borders into the field of politics. For business in disputed regions there is, however, no alternative to doing exactly that: Realize the political aspects of business activities, promote them in as much transparency as possible and actively defend them against a critical international public opinion.

Conclusions

Debates about economic activities in disputed regions – if they take place at all – are driven by prejudices, pre-perceived views and a normative overkill. In clear contrast to this debate, the present study concludes that doing business in disputed regions does contribute to improved infrastructure, provides necessary services and helps raise people's living standards. Without these economic activities, the overall situation on the ground would be much worse – irrespective of specific local, historical, cultural and political conditions. The business dimension should be much more actively integrated into strategic debates of state building and supporting failing or failed states in (re-)building their institutions and implementing necessary standards of governance.

Based on the logic of this proposal, there are five strategic ingredients to success for companies willing to do business in disputed regions:

1. First, do business and not politics and try to stay out of the political conflict whenever and as long as possible. In those cases where business provides state functions, one should refrain from generalizations. Best case scenarios are, of course, always possible. But the permanent risk of helping to stabilize corrupt and incompetent regimes including the risk of creating negative effects for many, and positive effects for only a few should always be high on the watch list of responsible business leaders.
2. Implement a transparent code of conduct, make sure that implementation works properly and be unwavering on promoting globally accepted standards of business behavior. Due to the lack of a doubtful character of regulatory or law enforcement agencies, it is a company's own responsibility to not only protect its business operations at whatever cost, but also its corporate image of doing clean and legitimate business.
3. Seek support on the one hand from reliable local partners and base your activities on personal and institutional trust, but on the other hand also from non-involved global actors and institutions since they can be of enormous help for image building both abroad and in the target area. Seeking such political support is a necessary requisite for success – both at home and in the target areas.
4. Whenever possible, join international regulatory systems, choose not only a local, but a regional approach and cooperate with other companies (including competitors) to coordinate the implementation of compliance. Single action might be countered or circumvented by local actors. Coordinated efforts help to improve the business environment. A lack of international support may not only endanger business success, but also have a negative impact on humanitarian standards.
5. Seek a pro-active, transparent communication strategy and thus create public understanding and international backing for local and regional business activities. It is imperative for companies

to choose a pro-active communication strategy promoting their activities not only within disputed regions where they are active, but even more importantly on their home markets. Actively managing potential public criticism from media and NGOs is key to success. In a business perspective, the topic is radioactive. There is no business representative who would not be concerned about being criticized in western media for doing business, i.e. making money, with corrupt dictators, undemocratic leaders or illegitimate institutions (always based on a western perception of democracy and how it should work). Thus, an "informed understanding of the realities as they truly are will provide business the confidence to stop apologizing, develop its own public agenda and promote the phenomenal benefits of competitive capitalism for the less developed countries of the world" (Ann Bernstein), a lesson which clearly also applies to business in disputed regions.

Finally, let us come back to the core thesis of this paper: Business activities are fundamentally important to help stabilize some of the most sensitive regions of today's world. But, of course, not all business is per se good business. But those companies which follow the rules and suggestions described above deserve political and public support including the protection of their people on the ground and provisions against doubtful legal prosecution.

For the international community, the core conclusion refers to the definite need for providing a new, more pragmatic and efficiency-oriented approach to the propagation of "good governance" and western values (including Human Rights). We have seen that in addition to purely economic aspects, business activities do provide carriers for a potentially successful diffusion strategy. It is exactly here that business and politics will have to improve coordinated approaches towards sensitive regions. Such coordination first and foremost must be based on the provision of legal support in a broad spectrum of risks (ranging from protection of individuals, to the implementation of legal procedures and to the advancement of international systems of regulations especially in those regions where rules almost by definition do not exist). Political actors who want to help stabilize certain disputed regions are well advised to integrate business perspectives into their strategic planning and to coordinate external influence by recognizing the demand for reliable legal frameworks as a requisite for any successful business as well as political strategy.

Prof. Dr. Eberhard Sandschneider is Otto Wolff-Director of the Research Institute, DGAP e.V.

Notes

1 Among the few exceptions are the detailed Business Environment and Enterprise Performance Surveys (BEEPS) conducted jointly by EBRD and the World Bank.

2 See e.g. Adam Harmes: The Return of the State. Paper presented at the annual meeting of the International Studies Association, Montreal, 26.05.2009. www.allacademic.com/meta/p73489_index.html

3 Josef Braml, Thomas Risse, Eberhard Sandschneider (ed.): Einsatz für den Frieden. Sicherheit und Entwicklung in Räumen begrenzter Staatlichkeit. (Peacekeeping. Security and development in areas of limited statehood.) München 2010.

4 OECD: International Support to Statebuilding in Situations of Fragility and Conflict. DCD/DAC (2010)37/REV1, 3. Nov. 2010.

5 The list of disputed regions discussed below is certainly not complete. For practical reasons it concentrates on the most important case studies. In a very formal sense, Taiwan could e.g. be described as a disputed region, but it certainly does not fulfil criteria of failing statehood – a reason why it is not included in this study.

6 The OECD lists the following six factors as decisive to understand regionally specific situations: history of state formation including legacies of colonialism and post-colonialism, structural cleavages, the history of violent conflict, geography and sources of revenues, economic development and poverty trap and institutional legacies.

7 Tommaso Ciarli, Saeed Parto and Maria Savona: UNU-WIDER Conflict and Entrepreneurship in Afghanistan. http://www.wider.unu.edu/publications/newsletter/articles/en_GB/Afghanistan-article-1109/.

8 Ingo Pies, Alexandra von Winning, Markus Sardison, Katrin Girlich: Sustainability in the Petroleum Industry: Theory and Practice of Voluntary Self-Commitments. Business Ethics Study Nr. 2010-1. Halle 2010, p. 80.

9 Judy Wickens: Good Governance Matters. In: Headquarters 41, October 2010, 28 – 29.

10 http://www.osce.org/item/36729.html

11 Translated from Albanian by Natascha Wunsch.

12 See PBN, English language media monitoring, February to October 2010. Copy with the author.

13 Ibid.

14 „Lasst uns in Frieden!“ (Leave us alone); www.ag-friedens-forschung.de/regionen/Somalia/dieterich.html; access 22.11.2010.

15 Ann Bernstein: The Case for Business in Developing Economies. Penguin 2010.

Herausgeber: Forschungsinstitut der Deutschen Gesellschaft für Auswärtige Politik e. V. | Rauchstraße 17/18 | 10787 Berlin
Tel.: +49 (0)30 25 42 31-0 | Fax: +49 (0)30 25 42 31-16 | info@dgap.org | www.dgap.org | www.aussenpolitik.net
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